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to be exercised through its own courts. Neither the common law, nor general principles of justice, give a private person the right to punish except in certain limited cases, such as that of parent and child, or school-master and pupil; so the right, when given, should be strictly construed and limited closely to the purpose intended by the statute. It is submitted, therefore, that any statute imposing upon a defendant a penalty which is not recompense for damage he has caused is a penal statute not properly enforceable in a foreign state.⁹

RECENT CASES.

AGENCY — AGENT'S LIABILITY TO THIRD PARTIES — WHETHER LIABLE FOR NONFEASANCE. — The defendant, an agent of a telephone company, was charged with the duty of inspecting and repairing its poles. As a result of his negligence in discharging these duties a pole fell and injured the plaintiff. *Held*, that the plaintiff may recover. *Murray v. Cowherd*, 148 Ky. 591, 147 S. W. 6.

The court refuses to follow the usual distinction between misfeasance and nonfeasance, and maintains that in each case the agent is guilty of a breach of duty to a third person. There is a principle in criminal law that the failure to perform a legal duty, such as that of an agent to his master, has the legal effect of an act, and if injury results therefrom the agent may be liable. *Regina v. Lowe*, 3 C. & K. 123. There, however, the question is merely one of punishing a wrongful act causing an injury. In torts a duty to the plaintiff is also necessary. It is a well-settled rule that there is no duty to act affirmatively unless the parties are in some peculiar relationship. See *Sweeney v. Old Colony, etc. R. Co.*, 10 Allen (Mass.) 368. A man need only be careful that the forces he sets in motion do not injure anyone. *Delaney v. Rochereau*, 34 La. Ann. 1123. The Kentucky court seems to regard the breach of any duty as equivalent to a breach of duty to the plaintiff. See *Drake v. Hagan*, 108 Tenn. 265, 67 S. W. 470. If this doctrine is carried to its logical conclusion a failure to perform any contract might subject a man to a multitude of tort actions.

BANKRUPTCY — DISCHARGE — EFFECT ON ASSIGNMENT OF EXPECTANCY. — An heir apparent assigned his bare expectancy as security for a loan. Later he was discharged in bankruptcy. Thereafter, upon the death of his ancestor, he succeeded to a share of her estate. *Held*, that equity will enforce the assignment. *Bridge v. Kedon*, 126 Pac. 149 (Cal.).

At common law an expectation of acquiring property was not recognized as a subject of transfer. *Lunn v. Thornton*, 1 C. B. 379; *Wheeler's Executors v. Wheeler*, 2 Metc. (Ky.) 474. But see *Buddle v. Green*, 27 L. J. Ex. 33, 34; *Jones v. Webster*, 48 Ala. 109, 112. Equity, however, will enforce the assignment of an heir's expectancy when fair to do so. *Hobson v. Trevor*, 2 P. Wms. 191; *Clendenen v. Wyatt*, 54 Kan. 523. *Contra*, *McCall v. Hampton*, 98 Ky. 166. On one view, it operates as a present equitable transfer of the expectancy. See 3 POMEROY, EQUITY JURISPRUDENCE, §§ 1271, 1288. By the better view, equity simply enforces a contractual duty to convey the property providing it is acquired. *Carleton v. Leighton*, 3 Meriv. 667. See *Taylor v. Swafford*, 122 Tenn. 303, 307-312, 123 S. W. 350, 351-352. Clearly the substantial

⁹ See MINOR, CONFLICT OF LAWS, § 10, pp. 23, 24. Cf. *Pickering v. Fisk*, 6 Vt. 102; *Blaine v. Curtis*, 59 Vt. 120, 7 Atl. 708; *Indiana v. John*, 5 Ham. (Ohio) 217.